

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA**

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

MFA.No. 1543 of 2001()

**OPMV.Nos.745/1996, 1231/1996, 1233/1996, 1234/1996 & 1382/1996
of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR**
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APPELLANT/PETITIONER:

**SHAJU @ SHAJI, S/o. JOHNY,
KALLUKKARAN HOUSE, P.O.
PONNOKKARA, THRISSUR-680 014.**

**BY ADV. SRI.P.V.CHANDRA MOHAN
SRI.T.VENUGOPALAN**

RESPONDENTS/RESPONDENTS:

- 1. A.V.BABU, S/o. VARKEY,
ACHARIKUDIYIL HOUSE,
MAROTTICAL P.O.,
THRISSUR DISTRICT.**
- 2. MR.N.P.BABU, NEDUMAMKUZHI HOUSE,
P.O. MAROTTICAL, THRISSUR-680 014.**
- 3. THE NATIONAL INSURANCE CO. LTD.
THRISSUR.**

BY ADV. SRI.RAJAN P.KALIYATH

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 01/10/2007, ALONG WITH MFA NO. 17/ 2002 AND CONNECTED
CASES,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NOS.1543 OF 2001

&

17, 188, 215 & 341 OF 2002 ()

Dated this the 1st day of October, 2007

J U D G M E N T

KOSHY,J.

All these appeals are filed by the claimant from a common award of the Motor Accidents Claims Tribunal. Appellant suffered personal injuries while travelling by the bus bearing registration No.KL S-1629 on 7.6.1995. The vehicle was proceeding along the Puthur - Marottichal public road from west to east. When the bus reached in front of the High School, Puthur, a group of people armed with dangerous weapons like sword, sticks and country bombs blocked the bus and they attacked the passengers of the bus. They threw country bombs into the bus and in the blast the bus was damaged and the petitioners who were sitting inside the bus were injured. They were hospitalised and now they are permanently disabled. According to the petitioners, the incident took place due to the negligence of the 2nd respondent, who was driving the bus. It

is alleged in the petition that even prior to the incident, the driver was aware that the incident would take place. It is further alleged in the petitions that the driver was warned by some people when the bus reached at Puthur Centre that some people were waiting near the Puthur High School armed with weapons. Had the driver been cautious and taken care not to take the vehicle to the incident spot, this accident could have been avoided. The 1st respondent was the registered owner of the bus and it was insured with the 3rd respondent Insurance company. The 1st respondent filed written statement admitting that petitioners travelled in the bus in question on 7.6.1995. But the injuries of the petitioners not arose out of the use of a motor vehicle. According to them, the miscreants were waiting with weapons in order to attack the petitioners. It was further contended that they were attacked only after they had got down from the bus. So, according to them, it was in no way connected with any negligence on the part of the 2nd respondent, driver. The accident had no connection with the

use of the vehicle. It was also pointed out that no criminal case was registered against the 2nd respondent for rashness and negligence. The petitioners did not sustain injuries in a road traffic accident but because of the attack of some miscreants. There was no negligence on the part of 1st or 2nd respondents. Hence they denied the liability of paying compensation. The 3rd respondent Insurance Company filed written statement taking similar contentions. They also contended that since there was no road traffic accident they are not liable to pay compensation though they have admitted the policy of the bus.

2. Only four claimants were examined in support of the claim petitioners. No independent evidence was adduced to show that even before the incident occurred driver was warned by local people that miscreants were waiting to attack the bus etc. Conductor of the bus was examined to prove that driver of the bus was driving the vehicle in the normal route. When the

bus reached at the incident spot, the mob asked the driver to stop the vehicle. But, he was not willing to stop the bus. But the bus was blocked and attack started and somebody tried to inflict a sword cut on the 2nd respondent, since he was not willing to stop the bus. But, fortunately that cut fell on the door by the side of the driver. So, he had no alternative but to stop the bus. It was at that time, the violence started.

3. Ext.A1 was produced by the appellants to prove the case whether the F.I.Statement is in connection with the claim. It was given by claimant in O.P.No.1382/1996. Tribunal after considering the F.I.Statement found as follows:

“It can be discerned from the F.I.Statement that all the petitioners are D.Y.F.I. workers and the persons who attacked the bus were B.J.P. workers. According to the statement given by him before the police he along with 29 DYFI workers were returning by the bus involved in this incident. The bus was proceeding towards Marottichal. When the bus reached in front of the High School, Puthur, certain BJP workers armed with weapons including sword, country bomb etc.

blocked the bus. The wind screen of the bus was broken. They shouted 'kill him' ' ' and entered the bus. One of the persons by name Gopalan received a cut and all of them were asked to get down. But, they did not get down. By that time, they exploded a country bomb outside the bus. Out of this fury, the other passengers in the bus got out of the bus. They were followed by the petitioners also. Then one person by name, Abi shouted, ' ' (kill him) and threw a bomb against the petitioner in O.P.No.745/1996. Thus, he was injured. So, the F.I.Statement given by the informant before the police would reveal that the BJP workers were waiting there for the petitioners herein to attack them, and evidently, it was only a political vengeance. But, we cannot forget the fact that the destination of none of the petitioners was the incident spot. That is why they remained in the bus. But, they were compelled to get down when the other passengers left the bus, hearing the bomb explosion.

4. Tribunal found that accident occurred and petitioners suffered injuries while they were travelling by the motor vehicle and therefore they suffered injuries due to an accident arising out of use of motor vehicle. Hence it was found that claims are maintainable under Section 166 of the Motor Vehicles Act. But according to the tribunal, accident arose not due to the

negligence of the driver and therefore there is no liability on the driver and consequently on the owner of the vehicle to pay compensation other than compensation under Section 140. Insurance company was also not liable to pay compensation under Section 166 of the M.V.Act. on the basis of a police of insurance. Unlike in a claim under Section 163 A, for making the driver or owner liable under Section 166, their negligence has to be proved. If driver is negligent in driving and is responsible for the accident, he is liable to pay compensation and owner is also liable vicariously to pay compensation. If the vehicle is insured, insurer has to indemnify them. It is essentially a tortuous liability. It is true that for granting compensation under Section 140 or 163 A, negligence of the respondent need not be proved. But this is only due to statutory obligation. But to award a claim under Section 166, there must be negligence on the part of the driver or owner of the offending vehicle even though proof required in criminal case cannot be insisted by the tribunal. Preponderance of

probability alone need be proved by claimants.

5. Learned counsel for the appellant relied on the decision of the Apex Court in **Samir Chanda v. M.D. Assam State Transport Corporation (1998 ACJ 1351)**. In that case, claimant suffered injuries due to a bomb blast in the bus. It was a time when Assam agitation was in the peak and buses were advised by the law enforcing authorities to take police escort. Tribunal found that since it was during agitation time, in view of special circumstances there was need for the driver or conductor to take additional precaution and driver did not request for police protection and since he failed to take 'usual police escort' as directed while driving the bus in the road, he was negligent. Tribunal granted compensation. Without upsetting the finding of the negligence, High court set aside the award stating that accident has no connection with the use of motor vehicle. Apex Court reversed the judgment as follows:

“15. After going through the judgment of the High Court, we are of the view that the High Court was not right on facts that there was no negligence on the part of the owner or the driver of the bus especially when the appellant has specifically pleaded about the negligence which was accepted by the Tribunal in the light of the pleadings and of the evidence produced before it. The explosion took place inside the bus is an admitted fact and the usual police was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant.”

This shows that to award compensation, there must be negligence even if accident arose due to the use of motor vehicle and it is that case that there was negligence on the part of the driver or owner to take usual police protection. In this case, tribunal found that injuries occurred due to the use of motor vehicle but there is no negligence on the part of driver or owner. The next case relied on by the counsel for the

appellant is **S.Kaushnuma Begum and others v. The New India Assurance Co. Ltd. (AIR 2001 SC 485)**. In that case, accident occurred due to burst of the tyre and tempo van turned turtle resulting in the death of a 35 year old man. Even though driver was not rash and negligent, owner has a responsibility to have the tyre in good condition. On these facts, taking **Rylands v. Fletcher (1861 -73 All ER (Reprint) 1)** Apex Court held that legal heirs of motor accident victim are entitled to compensation. In paragraph 12 of the judgment it was observed as follows:

“12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in Rylands v. Fletcher (1861 - 73 All ER (Reprint) 1) (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J. thus:

“The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do

mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

6. Strict liability, i.e. liability without fault, under the rule in Rylands v. Fletcher was in the case of accidents caused by the escape of noxious things such as sewage or gas. The 'strict liability rule' in Rylands v. Fletcher is explained by Sir William Wade in 'Administrative Law' as follows:

"Even in the absence of negligence the law of tort imposes liability on those who create situations of special danger. This strict liability is imposed by the rule in Rylands v. Fletcher on 'the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes', if the operation involves abnormal risk; and this rule has been held to cover many situations where damage has been done by such things as chemicals, fire and electricity." (See page 786 of the

'Administrative Law' by William Wade 7th Edition)

Lord Blackburn himself in a case in **Geddis v. Proprietors of Bann Reservoir ((1873) 3 App. Cas.430 at 455)** opined as follows:

“It is now thoroughly well established that no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the legislature has authorised, if it be done negligently.”

Even the strict liability rule in Rylands v. Fletcher is subject to respondents adducing evidence that accident is not due to their fault and it is due to the act of third party. Therefore it is for the applicants to claim compensation from the person who caused the accidental injuries. In **Kaushnuma Begum's case** tyre burst was the cause of the accident and absence of proper care regarding condition of the tyre by owner and driver shows negligence on their part. Hence tribunal found on

evidence that accident is due to the act of third party and there is no negligence on the part of owner or driver. After finding that there is no negligence on the part of the driver and owner, by applying the principles in *Rylands v. Fletcher*, we cannot direct the driver and conductor to pay compensation except under Section 140 or 163 A. Even doctrine of 'res ipsa loquitur' (the things speaks for itself) does not alter the general principle that onus to prove negligence rests upon the claimant. The maxim 'res ipsa loquitur' is only a rule of evidence and it will come into play to the help of the claimant only when the circumstances suggest negligence on the part of the driver of the vehicle as held in **Biju K. Francis v. K.S.R.T.C. (2005 (1) KLT 579)**. In this case on evidence tribunal found that driver or owner of the vehicle was found not negligent or in any way responsible for the accident. In such circumstances we cannot impose liability to pay compensation on the respondents. We fully agree with the view of the tribunal. We also note that except the claimant in

O.P.No.745/1996 (MFA.No.1543/2001) other claimants suffered very minor injuries like abrasion etc. Claimant in OP.No.745/1996 produced a certificate that he has 15% disability. Tribunal did not agree the same but found that he suffered permanent disablement and for that Rs.25,000/- was granted under Section 140 with 9% interest from the date of petition. But all claims under Section 166 were dismissed as driver was not negligent. Driver or owner was not in any way responsible for the accident. We agree with the above findings. Hence claim of compensation under Section 166 was rightly rejected. This finding will not take away the right of the appellants in claiming damages from the person who caused bomb blast. Hence we dismiss all the appeals.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

**M.F.A.NOS.1543 OF 2001
&
17, 188, 215 & 341 OF 2002 ()**

J U D G M E N T

1st October, 2007